

REMARKS

Applicant has amended the above-identified application in response to the Office Action dated July 1, 2005.

Applicant has amended each of independent claims 1, 23 and 62. Claims 1-37 and 62-73 remain pending.

Each of the independent claims has been further amended to further recite the microwave system as being configured to impart microwave energy to the egg, a first quantity of energy being applied to a yolk of the in-shell egg in accordance with at least one of a size and a temperature of the yolk to heat the yolk to a first predetermined temperature. A second quantity of microwave energy is further recited as being separately imparted to an albumen of the in-shell egg, and in order to heat the albumen to a second predetermined temperature. Support for these amending recitations is derived from the present specification, page 5, lines 20, et seq., as well as page 11, line 1 to page 12, line 28.

The Examiner cited WO 97/02751 (Purdue Research), either alone or as the primary reference in combination with Niederer, Anschutz, JP 2000/014269 and van der Schoot, as rendering obvious each of the independent claims. Purdue teaches a process for pasteurizing in-shell eggs, and by which the application of microwave energy is taught as one possible variant for preheating an egg shell to a predetermined temperature near, but below pasteurization temperature (see page 6, line 30, et seq. in Purdue 97/02751).

In analyzing and applying the 97/02751 reference, the Examiner further stated, on page 3, second paragraph, that heating of the albumen and yolk to different temperatures would inherently occur due to the differences in material make up of the individual egg components.

Applicant disputes that the Examiner's application of the Purdue reference, and as teaching the application of individual heating components to the egg yolk and albumen.

In any event, and as now further recited, each of the independent claims now specifies that individual and targeted quantities of microwave energy are imparted to each of the yolk and albumen, in order to accomplish the pasteurization of the in-shell egg. This is distinguishable again from Purdue 97/02751 which discloses only microwave heating the shell of the egg in an initial preheat operation.

Accordingly, Purdue does not teach or suggest the application of microwave heat as early recited in the amended claims. In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the art having the references before him to make the proposed combination or modification. See *In re Litner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA, 1972). The conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention, see again *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d, 1596, 1598 (Fed. Cir. 1988).

Rejections based on §103 must instead rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the

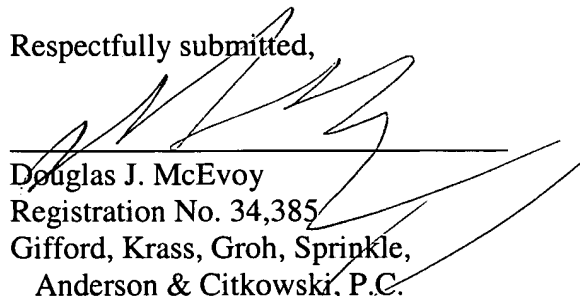
rejection. Rather, and when satisfying the burden of showing obviousness of the combination, the Examiner can show some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art which would lead that individual to combine the relevant teachings of the references. *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). Furthermore, broad conclusory statements regarding the teaching of multiple references, standing alone, are not “evidence”. *In re Dembiczak*, 173 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact. *Dembiczak*, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Applying the above, Applicant submits that the failure of Purdue to teach or suggest any form of targeted application of microwave energy, such as specifically to each of the in-shell egg yolk and albumen, does not render the present claims inherently obvious to Purdue simply because it teaches microwave preheating of the egg shell. Given further that each of the secondary cited references are unrelated to the microwave pasteurization aspects argued in reference to each amended independent claim, these patentably distinguishing features are likewise submitted to apply to the other cited prior art.

In view of the above, the claims in the present application are submitted to be allowable and favorable action is requested. Also, attached is a copy of a Revocation of Power of Attorney and Appointment of New Power of Attorney, in favor of the undersigned, and which is being concurrently filed and which authorizes this response.

Attorney for Applicant may be contacted at (248) 647-6000 with any questions the Examiner may have.

Respectfully submitted,



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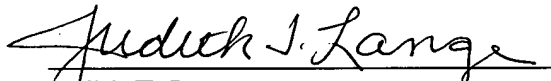
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Judith T. Lange